UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE KAREN W. FORD, Debtor.	BAP No. WY-13-079
WINSHIP & WINSHIP, P.C., Appellant, v. NATASHA SAYPOL and WELLS FARGO BANK, N.A., Appellees.	Bankr. No. 12-20094 Chapter 7 DISMISSAL ORDER November 26, 2013

Before CORNISH, MICHAEL, and JACOBVITZ, Bankruptcy Judges.

On November 4, 2013, this Court issued its Order to Show Cause Why Appeal Should Not Be Considered for Dismissal as Interlocutory ("OSC"). On November 15, 2013, the Appellant Winship & Winship. P.C. filed its Memorandum in response to the OSC. On November 20, 2013, the Appellee Natasha Saypol ("Saypol") filed a Response to the Memorandum.

Debtor filed her Chapter 7 petition on February 10, 2012, and her case was converted to Chapter 11 on June 6, 2013. Pre-conversion, on April 25, 2013, Appellants filed an application for attorney's fees stemming from its representation of the debtor, to which Saypol, *inter alia*, objected. On September 3, 2013, the bankruptcy court entered its Order on Second Application for Approval of Attorneys' Fees, which granted in part and denied in part Appellant's

fee application (the "September 3 Order").[1]

The September 3 Order reserved judgment on a portion of Appellant's interim fee application insofar as it related to fees incurred in connection with a state court sanctions proceeding brought by Saypol against the debtor. On September 5, 2013, Appellant filed a Motion for Further Findings Pursuant to Fed. R. Bankr. P. 7052, asking the bankruptcy court "to make additional findings to [the September 3 Order]" based on the final resolution of the state court proceedings. Hence, the bankruptcy court entered its October 21, 2013, Supplemental Order Awarding Attorney Fees (the "October 21 Order"), which addressed and awarded those fees not included in its September 3 Order. On October 31, 2013, Appellant filed a Notice of Appeal seeking review of the September 3 Order and the October 21 Order (collectively, the "Appealed Order").

This Court has jurisdiction to hear appeals from final orders, final collateral orders, and, with leave of court, interlocutory orders. 28 U.S.C. § 158; *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 768 (10th Cir. BAP 1997). An order is considered final if it "'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). Because the Appealed Order does not end the bankruptcy case, it does not constitute a final order appropriate for appellate review at this juncture. *See In re Union Home & Indus.*, 375 B.R. 912 (10th Cir. BAP 2007) (orders determining interim fee applications are not final for purposes of appeal); *Winship v. Cook (In re Cook)*, 223 B.R. 782, 792 (10th Cir. BAP 1998) ("An

[1] In response to a compliance order issued by the bankruptcy court, Appellant filed a correction regarding the requested fees, hence its application was referred to by the court as a second interim request. *See* September 3 Order at 1, n.1.

order approving employment, allowing interim fees, or denying disqualification of a professional is not a final, appealable order.").

A final collateral order is one that "(1) conclusively determine[s] a disputed question that [is] completely separate from the merits of the action, (2) [is] effectively unreviewable on appeal from a final judgment, and (3) [is] too important to be denied review." *Personette*, 204 B.R. at 768. As the Appealed Order does not fall under the collateral order exception, this Court may exercise jurisdiction over it only if leave of court is appropriate. We have stated:

> Leave to hear appeals from interlocutory orders should be granted with discrimination and reserved for cases of exceptional circumstances. Appealable interlocutory orders must involve a controlling question of law as to which there is substantial ground for difference of opinion, and the immediate resolution of the order may materially advance the ultimate termination of the litigation. *See* 28 U.S.C. § 1292(b); Fed. R. Bankr. P. 8018(b); *Am. Freight Sys., Inc. v. Transport Ins. Co. (In re Am. Freight Sys., Inc.)*, 194 B.R. 659, 661 (D. Kan. 1996); *Intercontinental Enter., Inc. v. Keller (In re Blinder Robinson & Co.)*, 132 B.R. 759, 764 (D. Colo. 1991).

Personette v. Kennedy (In re Midgard Corp.), 204 B.R. 764, 769-70 (10th Cir. BAP 1997). We are unable to conclude that this case is one involving exceptional circumstances, or a controlling question of law as to which there is a substantial ground for difference of opinion.

Here, debtor's case was converted to Chapter 7 approximately two months after the expiration of the fee application period, and Appellant's application never specified that it was a final fee application nor did it seek final approval of fees. Consequently, the Appealed Order did not grant final approval of any fees. That Appellant might determine that it will not submit any further fee applications arising out of its representation of the debtor due to the present insufficiency of funds in debtor's Chapter 7 estate is insufficient to show that leave to appeal is appropriate at this juncture. Once a final fee order is entered by the bankruptcy court Appellant is of course free to challenge the orders at issue herein.

Accordingly, it is HEREBY ORDERED:

(1) This appeal is DISMISSED for lack of jurisdiction on the ground that it is interlocutory.

(2) All deadlines herein are TERMINATED.

For the Panel:

Blaine F. Bates
Clerk of Court